

**STATE OF NEW YORK  
SUPREME COURT      COUNTY OF ONONDAGA**

**THE HAYNER HOYT CORPORATION,**

**Index No.  
Filing Date:**

**Plaintiff,**

**-vs-**

**SUMMONS**

**OFF DUTY OFFICERS, INC.,**

**Defendant.**

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**TO THE ABOVE-NAMED DEFENDANT:**

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiffs' attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is plaintiff's place of business.

**DATED: July 10, 2018**

**COSTELLO, COONEY & FEARON, PLLC**



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**KEVIN P. RYAN**  
**Attorneys for Plaintiffs,**  
**The Hayner Hoyt Corporation**  
**Office and Post Office Address**  
**500 Plum Street, Suite 300**  
**Syracuse, New York 13204-1401**  
**Telephone: (315) 422-1152**

**TO: OFF DUTY OFFICERS, INC.**  
2365 La Mirada Drive  
Vista, California 92081

COSTELLO, COONEY & FEARON, PLLC

**STATE OF NEW YORK**  
**SUPREME COURT      COUNTY OF ONONDAGA**

**THE HAYNER HOYT CORPORATION,**

**Index No.**

**Plaintiff,**

**COMPLAINT**

**-vs-**

**OFF DUTY OFFICERS, INC.,**

**Defendant.**

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Plaintiff, The Hayner Hoyt Corporation, by and through its attorneys, Costello, Cooney and Fearon, PLLC, as and for its Complaint against the Defendant, Off Duty Officers, Inc., hereby alleges as follows:

1. The Hayner Hoyt Corporation ("Hayner Hoyt") brings this action against Off Duty Officers, Inc. ("Off Duty Officers") seeking an award of damages resulting from Off Duty Officers' breach of a contract to provide security at the Johnson Graduate School of Management at Cornell University.

**PARTIES**

2. Hayner Hoyt is a domestic business corporation, organized and existing under the laws of the State of New York with its principal place of business located at 625 Erie Boulevard West, Syracuse, New York 13204.

3. Upon information and belief, Off Duty Officers is a corporation, organized and existing under the laws of the State of California with its principal place of business located at 2365 La Mirada Drive, Vista, California 92081. Upon information and belief, Off Duty Officers is not registered to transact business in the State of New York with the New York State Department of State.

### FACTUAL BACKGROUND

4. On or about December 2, 2015, Hayner Hoyt entered into a contract with 209-215 Dryden Road Associates, LLC to construct a Project known as the Johnson Graduate School of Management on the campus of Cornell University ("Project"). Under the terms of that agreement, Hayner Hoyt was required to provide security on the Project.

5. On or about June 9, 2017, Hayner Hoyt entered into a subcontract with Off Duty Officers pursuant to which Off Duty Officers agreed to "provide overnight fire watch services, including one observer onsite at all times within the hours of 6:00 p.m. and 6:00 a.m." A copy of the subcontract is attached hereto as **Exhibit "1"**.

6. Section 13.1 of the Subcontract prohibited Off Duty Officers from assigning subcontract or subcontracting the whole without the written consent of Hayner Hoyt.

7. At no point did Off Duty Officers seek or receive Hayner Hoyt's approval to subcontract all or any portion of the work required of it under the subcontract agreement.

8. Upon information and belief, Off Duty Officers did in fact subcontract the work required of it to a third-party, Alpha Security Bureau.

9. On or about June 12, 2017, Mr. Michael Davis, an employee of Alpha Security, murdered an individual at the Project site and then set the body on fire in an attempt to cover up the crime.

10. As a consequence of Mr. Davis's actions, Hayner Hoyt sustained damages. More specifically, Hayner Hoyt incurred additional costs as a result of:

- a. Having to repair the damage caused by the fire;
- b. Having its man power and supervisory employees tied up addressing the situation;
- c. Incurring additional costs as a result of the delay caused by this incident;

d. Being forced to pay for additional security above and beyond what was originally contemplated on the Project;

e. As well as paying additional costs, legal fees, and home office overhead.

11. Hayner Hoyt now seeks an Order of this Court awarding it damages in an amount to adequately compensate it for the damages caused by Mr. Davis's actions.

**AS AND FOR ITS FIRST CAUSE OF ACTION  
HAYNER HOYT HEREBY ALLEGES:**

12. Hayner Hoyt repeats and realleges the allegations contained in paragraphs "1" through "11" as if set forth in detail herein.

13. The subcontract agreement between Hayner Hoyt and Off Duty Officers constituted a valid and binding agreement.

14. Hayner Hoyt fulfilled all of its obligations pursuant to that subcontract agreement.

15. Off Duty Officers breached the subcontract agreement between it and Hayner Hoyt not only in subcontracting the work to Alpha Security, through the actions of the Alpha Security employee and in failing to monitor or supervise the actions of Alpha Security on the Project.

16. As a consequence of Off Duty Officers' breach, Hayner Hoyt has sustained significant economic damages which it now seeks to recoup.

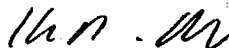
17. For the reasons set forth herein, Hayner Hoyt respectfully requests that this Court issue an award of damages in an amount to compensate it for its loss in the Project along with applicable interest.

WHEREFORE, for the reasons set forth herein, The Hayner Hoyt Corporation respectfully requests that this Court award it damages in an amount to recover and adequately compensate it for its

damages in the Project along with applicable costs, interest and disbursements and granting such other and further relief as may be deemed just and proper.

**DATED: July 10, 2018**

**COSTELLO, COONEY & FEARON, PLLC**



**KEVIN P. RYAN**

**Attorneys for Plaintiff,**

***The Hayner Hoyt Corporation***

**Office and Post Office Address**

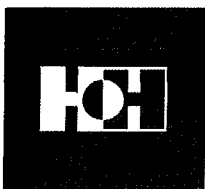
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**Syracuse, New York 13204-1401**

**Telephone: (315) 422-1152**

COSTELLO, COONEY & FEARON, PLLC

# **EXHIBIT “1”**



## Subcontract Agreement

Agreement between The Hayner Hoyt Corporation and Subcontractor

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Agreement made as of: The 9th day of June, 2017

Between the Contractor: The Hayner Hoyt Corporation  
625 Erie Blvd West  
Syracuse, NY 13204

and the Subcontractor: OFF DUTY OFFICERS, INC.  
2365 La Mirada Drive  
Vista, CA 92081  
P: 760-509-4817 F: {ToContact.Fax}  
Email: mespinosa@offdutyofficers.com

The Project: JOHNSON GRADUATE SCHOOL OF MANAGEMENT  
209-215 Dryden Road  
Ithaca, NY 14850

The Owner: 209-215 DRYDEN ROAD ASSOCIATES, LLC  
15 Thornwood Dr, PO Box 4860 Drive  
Ithaca, NY 14850

The Architect: IKON.5 ARCHITECTS  
864 Mapleton Rd, Suite 100  
Princeton, NJ 08540

The Contractor and Subcontractor agree as set forth below:

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### ARTICLE 1 THE CONTRACT DOCUMENTS

This subcontract agreement ("Subcontract" or "Agreement") consists of this Agreement and all Schedules, Attachments, and Exhibits attached hereto. The following other documents are incorporated into this Agreement as if fully rewritten herein: the documents referenced in Section 16.7 of this Agreement, the agreement between the Owner and Contractor dated as of 12/2/2015 (the "Owner Agreement"), the Conditions of the Owner Agreement (General, Supplementary and other Conditions), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of the Owner Agreement and agreed upon by the parties to this Subcontract. All agreements and other documents, including, but not limited to, this Agreement, referenced in this Section 1.1 shall hereinafter be referred to as the "Contract Documents." Copies of the Contract Documents which are applicable to the Work under this Subcontract shall be



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furnished to the Subcontractor upon request at the cost of printing. The Subcontractor represents and warrants that it has examined the Contract Documents and agrees to be bound by every term and condition therein. If anything in the Contract Documents is inconsistent with this Agreement, this Agreement shall govern. If the typed language in this Agreement is inconsistent with any *italicized* language in this Agreement, the typed language shall govern.

## ARTICLE 2 THE WORK

- 2.1 The Subcontractor shall perform all the Work required by the Contract Documents for:

The contractor shall provide overnight firewatch services, including one observer on-site at all times between the hours of 6 p.m. to 6 a.m

## ARTICLE 3 TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 3.1 The Work to be performed under this Subcontract shall be commenced 6/9/2017 and, subject to authorized adjustments, shall be substantially completed in adequate time to allow the Contractor to complete its contractual obligations under the Owner Contract. The Subcontractor will also follow the milestone dates listed herein:

Not Applicable

- 3.2 Time is of the essence of this Subcontract.
- 3.3 No extension of time will be valid without the Contractor's written consent, after a claim is made by the Subcontractor in accordance with Section 9.22.

## ARTICLE 4 SUBCONTRACT PRICE AND PAYMENT

- 4.1 The Contractor shall pay the Subcontractor in current funds for the satisfactory performance and completion of the Subcontractor's Work and all requirements of the Contract Documents, subject to additions and deductions as this Agreement and the Contract Documents may permit, the Subcontract Sum of *Zero and 00/100 Dollars, \$0.00*

(or)

The Subcontract Sum is determined as follows:

Description	Scheduled Value

- 4.2 Applications for monthly progress payments shall be in writing in accordance with this Article and the terms of The Hayner Hoyt Corporation Subcontractor Payment



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Application form. All applications for payment shall include a detailed schedule of values on a G703 or equivalent form, a completed Page 2 from The Hayner Hoyt Corporation Subcontractor Payment Application form, and applicable lien releases. The Subcontractor shall submit a draft copy of the application for payment, according to the schedule of values required in Section 4.3, no later than five (5) business days before the Contractor's billing due date under the Owner Contract, less 10.00% retention. The Contractor's Project Manager will review the draft application for payment and return it to the Subcontractor within one (1) business days with one of the following responses: "Rejected", "Approved", or "Approved as Noted". If "Approved" or "Approved as Noted", the Subcontractor will then be required to submit a final draft including any requested revisions by the 20th day of the month or as otherwise required to meet the Contractor's billing due date with the Owner.

*Special Payment Terms: None*

- 4.3 The Subcontractor shall, before submitting its first application for payment, submit to the Contractor a schedule of values of the various parts of the Work aggregating the total sum of this Subcontract, made out in such detail as the Subcontractor and Contractor may agree upon or as required by the Owner, and supported by such evidence as to its correctness as the Contractor may direct. This schedule of values, when approved by the Contractor, shall be used only as a basis for applications for payment, unless it be found to be in error. In applying for payment, the Subcontractor shall submit a statement based upon this schedule.
- 4.4 If permitted by the Contract Documents, the Owner, and Contractor, Subcontractor may invoice for materials or equipment not incorporated in the Work but delivered and suitably stored at the Project site or at some other location agreed upon in writing. If not located on the Project site, stored materials must be located in a secure bonded warehouse or other Contractor-approved location at the Subcontractor's expense, so that the materials will be secured from creditors and title can pass to the Contractor.
- 4.5 Unless otherwise provided in the Contract Documents, the Contractor shall pay the Subcontractor each progress payment and the final payment under this Subcontract within seven (7) working days after the Contractor receives corresponding payment from the Owner. Further, the Contractor shall pay the Subcontractor each progress payment and the final payment only after all required lien releases are submitted per the terms of The Hayner Hoyt Corporation Subcontractor Payment Application form. The amount of each progress payment to the Subcontractor shall be the amount to which the Subcontractor is entitled, reflecting the percentage of completion allowed to the Contractor and paid by the Owner for the Work under this Subcontract, and less the percentage of retention defined in this Agreement, if any, on account of Subcontractor's Work, plus, to the extent permitted by the Contract Documents, the amount allowed for materials and equipment suitably stored by the Subcontractor.
- 4.6 The Contractor shall permit the Subcontractor to request directly from the Architect information regarding the percentages of completion or the amount certified on account of Work done by the Subcontractor.



- 4.7 A Certificate for Payment issued by the Architect shall be an express condition precedent to Contractor's obligation to pay Subcontractor.
- 4.8 When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the Contract Documents, the Contractor shall, upon application by the Subcontractor, make prompt application for payment of such Work in accordance with the Owner Contract. Within thirty days following issuance by the Architect of the Certificate for Payment covering such substantially completed Work, and after the Owner has made corresponding payment to the Contractor, the Contractor shall, to the full extent provided in the Contract Documents, make payment to the Subcontractor of the entire unpaid balance of the Contract Sum or of that portion of the Contract Sum attributable to the substantially completed Work, less any portion of the funds for the Subcontractor's Work withheld in accordance with the Certificate for Payment to cover costs of items to be completed or corrected by the Subcontractor.
- 4.9 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be due when the Work described in this Subcontract is fully completed and performed in accordance with the Contract Documents and is satisfactory to the Architect and Owner. Final payment will be made after Contractor receives final payment from Owner and after the Contractor receives from the Subcontractor as-built drawings, written guarantees and warranties, a final inspection certificate, receipt of approved and invoiced change orders, punch-lists completed and signed off, final lien releases, completion of any required training of Owner personnel on products or systems installed under this Agreement, final reports and certifications, and any other specific information required by the Contract Documents. Subcontractor shall complete punch-list work in a prompt manner as required by the project schedule. Before issuance of the final payment, the Subcontractor shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied.
- 4.10 Subcontractor agrees that, unless specifically noted in this Agreement, all costs associated with material or labor escalation, coordination, staging, materials, fabrication, engineering and protection have been included in the Subcontract Sum.
- 4.11 If the Contractor does not pay the Subcontractor, through no fault of the Subcontractor, within seven (7) days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other remedy it may have, upon seven (7) additional days written notice to the Contractor, stop its Work until payment of the amount owing has been received.
- 4.12 The Subcontractor agrees that no claim for payment for services rendered or materials and equipment furnished by the Subcontractor to the Contractor shall be valid without prior notice to the Contractor and unless written notice thereof is given by the Subcontractor to the Contractor not later than the tenth day of the calendar month following that in which the claim originated.
- 4.13 Progress payments or final payment due and unpaid under this Subcontract shall bear interest at the rate required by applicable law, if any.



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- 4.14 Subcontractor shall provide responses to pricing requests in five (5) days or less. If pricing is not received, and after an additional three (3) day notice, the Contractor may estimate and submit a price on behalf of the Subcontractor, and the Subcontractor's compensation for the underlying labor, Work, material, product, or equipment shall be limited to the pricing developed by the Contractor.

## ARTICLE 5 SUBCONTRACTOR BONDS

- 5.1 The parties agree that the Subcontractor shall furnish to the Contractor, as the named Obligee, appropriate surety bonds to secure the faithful performance of the Subcontract Work and to satisfy all Subcontractor payment obligations arising thereunder. The Subcontractor surety bond requirements, if any, applicable to this Subcontract are as follows:

Subcontractor Payment/Performance Bond:

Not Required

- 5.2 If a performance or payment bond, or both, are required of the Subcontractor under this Subcontract, then said bonds shall be in the full amount of the Subcontract Sum, unless otherwise specified herein, and said bonds shall be in a form and by a surety mutually agreeable to the Contractor and Subcontractor.
- 5.3 The Subcontractor shall be reimbursed for the cost of any required performance or payment bonds simultaneously with the first progress payment hereunder. The reimbursement amount for the Subcontractor bonds shall not exceed the actual cost paid by Subcontractor as supported by a "paid receipt" and in no event shall exceed 1.25% of the Subcontract Sum.
- 5.4 In the event the Subcontractor shall fail to promptly provide any required bonds, the Contractor may terminate this Subcontract and enter into a subcontract for the balance of the Subcontract Work with another subcontractor. All costs and expenses incurred by the Contractor as a result of said termination shall be paid by the Subcontractor.

## ARTICLE 6 TEMPORARY FACILITIES AND SERVICES

- 6.1 Unless otherwise stated in this Agreement, the Contractor shall furnish and make available at no cost to the Subcontractor the following temporary facilities and services either directly or through agreements with other subcontractors: temporary electric, temporary water, temporary sanitary facilities, and dumpsters.

## ARTICLE 7 INSURANCE

- 7.1 Prior to starting work, the Subcontractor shall obtain the insurance required in Schedule 1 to this Agreement from a responsible insurer, and shall furnish satisfactory evidence to the Contractor of its compliance with all terms and provisions of Schedule 1.



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- 7.2 The Contractor and Subcontractor waive all rights against each other and against the Owner, the Architect, separate contractors and all other subcontractors for damages caused by fire or other perils to the extent covered by property insurance provided under the General Conditions, except such rights as they may have to the proceeds of such insurance.

## ARTICLE 8 SITE MAINTENANCE AND SAFETY

- 8.1 The Subcontractor is solely responsible for project safety relating to or in the vicinity of its Work, and is required to comply with all applicable OSHA and general safety laws, regulations and other requirements. The Subcontractor is required to identify and correct safety violations as they may occur. If Contractor is charged, as a "controlling contractor", with a violation by OSHA or other entity as a result of the Subcontractor's acts or omissions, Subcontractor shall be liable to Contractor for all costs associated with such violations, including but not limited to costs of defense, reasonable attorneys' fees, and costs of any fine(s).
- 8.2 The Subcontractor shall adhere to all Federal OSHA standards governing hazard communications including, but not limited to, posting the Material Safety Data Sheets for any hazardous chemicals used at the Project site and the proper labeling of any proper containers containing such chemicals. A listing of hazardous chemicals should be presented to Contractor Superintendent for the Project.
- 8.3 The Subcontractor shall take all reasonable safety precautions with respect to its Work and shall comply with all safety measures initiated by the Contractor and with all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety of persons or property in accordance with the requirements of the Contract Documents. The Subcontractor shall report within twenty-four (24) hours to the Contractor any injury to any of the Subcontractor's employees or any other persons at the Project site.
- 8.4 The Subcontractor shall, at all times, keep the premises free from accumulation of waste materials or rubbish arising out of the operations of this Subcontract. The Subcontractor shall be responsible for daily clean-up of its work areas, up to and including a fine broom sweep. All debris and waste shall be taken to the designated dumpsters daily including properly sorting debris to recycling dumpsters if required. Unless otherwise provided, the Subcontractor shall not be held responsible for unclean conditions caused by other contractors or subcontractors; however, if a dispute arises between the separate subcontractors as to their responsibility for cleaning up, the Contractor may clean up and charge the cost thereof to one or more of the subcontractors as the Contractor shall determine to be just.

## ARTICLE 9 SUBCONTRACTOR RIGHTS AND OBLIGATIONS

- 9.1 The Subcontractor shall be bound to the Contractor by the terms of this Agreement and, to the extent that provisions of the Owner Contract apply to the Work of the Subcontractor as defined in this Agreement, the Subcontractor shall assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Owner



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Contract, assumes toward the Owner and the Architect, and shall have the benefit of all rights, remedies and redress against the Contractor which the Contractor, by the Owner Contract, has against the Owner, provided that where any provision of the Owner Contract is inconsistent with any provision of this Agreement, the provision granting the Contractor the greater rights or setting forth the more stringent requirement as applied to Subcontractor shall govern.

- 9.2 The Subcontractor agrees that the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms. The Subcontractor also agrees that unless otherwise specified in this Agreement, the Subcontractor is responsible for receiving, unloading, and properly storing all of its own materials and equipment delivered to the Project site with its own forces and equipment. If the Subcontractor fails to do so, the Contractor has the right to be reimbursed for the cost of material and equipment handling whether done so directly by the Contractor, or through another subcontractor or party onsite.
- 9.3 The Subcontractor shall cooperate with the Contractor in scheduling and performing its Work to avoid conflict or interference with the work of others.
- 9.4 The Subcontractor shall promptly submit shop drawings and samples required in order to perform its Work efficiently, expeditiously, and in a manner that will not cause delay in the progress of the work of the Contractor or other subcontractors. The submittals will be delivered electronically and/or in the quantity, quality, and means required by the Architect, Owner, and/or Contractor. Should insufficient quantities be provided, the cost of reproduction will be reimbursed to Contractor by the Subcontractor if the Subcontractor fails to provide additional quantities in a timely fashion when requested. The Architect or Owner's approval of shop drawings or lack thereof does not relieve the Subcontractor of responsibility to perform its Work in accordance with the Contract Documents.
- 9.5 The Subcontractor shall be responsible for submitting the required project closeout information in the specified quantities listed in the Contract Documents plus one copy to be retained by the Contractor. The Subcontractor will also be required to submit information electronically when possible unless specified otherwise in this Agreement. If no quantities of closeout information are listed in the Contract Documents, the Subcontractor is to submit (4) copies.
- 9.6 The Subcontractor shall use products and materials of specified manufacturers. No substitutions will be permitted unless allowed by the specifications. No additional compensation will be permitted for products and materials of specified manufacturers required by the specifications unless specifically noted in this Subcontract.
- 9.7 The Subcontractor shall furnish periodic progress reports on the Work as mutually agreed, including information on the status of materials and equipment under this Subcontract which may be in the process of preparation or manufacture.





- 9.8 The Subcontractor agrees that all Work shall be done subject to the final approval of the Architect and/or Owner. The Architect's decisions in matters relating to artistic effect shall be final if consistent with the intent of the Contract Documents.
- 9.9 The Subcontractor shall pay for all materials, equipment and labor used in, or in connection with, the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence to verify compliance with the above requirements.
- 9.10 The Contractor shall provide periodic updates to the Project schedule, and the Subcontractor shall, within five (5) working days, submit to the Contractor any exceptions to the updated schedule. If no exceptions are received, it is understood that the Subcontractor has agreed to the updated schedule.
- 9.11 In the event the Subcontractor fails to provide adequate workforce, materials, and/or equipment to maintain the Project schedule or complete its Work in a sequence that allows other subcontractors to complete their related work, and fails within forty-eight (48) hours after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, and without prejudice to any other remedy it may have, (1) supplement the Subcontractor's workforce with employees of the Contractor or other subcontractors; and/or (2) pay premiums to other subcontractors to accelerate their work to recover from Subcontractor's performance. The costs for either or both of these actions may be deducted from the payments then or thereafter due the Subcontractor including, at the Contractor's discretion, a fifteen percent (15%) supervision and overhead allowance. Subcontractor shall provide adequate manpower and supervision to maintain the established Project schedule.
- 9.12 The Subcontractor shall secure and pay for all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Subcontractor's Work, as required by the Contract Documents.
- 9.13 The Subcontractor shall be bound by and, at its own cost, comply with all federal, state and local laws, ordinances, rules, regulations and orders of any public authority (collectively, "Laws") along with all other requirements applicable to the Subcontract and the Work, including but not limited to, OSHA and other safety requirements, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, safety and all other laws with which the Contractor must comply. The Subcontractor shall be liable to the Contractor and the Owner for all loss, cost, and expense attributable to acts of commission or omission by the Subcontractor, its employees and agents resulting from the failure to comply with Laws, including but not limited to fines, penalties, cost of corrective measures, and reasonable attorneys' fees.

Subcontractor further agrees to use E-Verify to verify the employment eligibility of all employees assigned to this project and shall include this requirement for further flow down to all lower tier subcontractors. Verification of the eligibility of employees to work on the Project site shall be provided to the Contractor. Subcontractor will be



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liable to the Contractor and the Owner for all loss, cost and expense attributable to acts of commission or omission by the Subcontractor, its employees and agents resulting from the failure to comply with these requirements, including but not limited to fines, penalties or corrective measures.

- 9.14 In carrying out its Work, the Subcontractor shall take all necessary precautions to protect properly the finished work of other trades from damage caused by its operations.
- 9.15 The Subcontractor acknowledges that the Contractor is or will be, from time to time, engaging and employing the services of other subcontractors and other specialty trades for the performance of other work in and about the Project and that the Subcontractor may not have exclusive possession of the Project site at all times during the performance of its Work. The Subcontractor shall cooperate with the various subcontractors and trades employed by the Contractor and arrange the sequence of its Work to conform to the progressive operations of the Project already under contract and to be put under contract. Cooperation with subcontractors already engaged and to be engaged upon the Project site is essential to properly coordinate the efforts of all subcontractors engaged in the Project. Where the work of the Subcontractor, the Contractor and other Subcontractor overlaps or dovetails, materials shall be delivered and operations conducted so as to carry on the work continuously in an efficient and workmanlike manner. Delays or oversights on the part of the Subcontractor in replacing work already in place shall not be a basis for a claim for extra compensation against the Contractor. In case of interference between the operations of different Subcontractors, the Contractor will be the sole judge of the rights of each subcontractor and of the sequence of the work necessary to promote completion of the entire Project. The Contractor's decision shall be final and binding.
- 9.16 The Subcontractor agrees that it has included in its price for its Work any and all costs of doing the work under this Agreement. The Subcontractor will make no claim for additional costs because of interferences by other contractors, subcontractors, utility work and similar interferences and the necessary or desirability of opening portions of the Project to traffic, delivery of material, installation of utilities and roads and occupancy before the entire work is completed.
- 9.17 Subcontractor will be responsible to provide any firestopping for its own Work as required by the Contract Documents and local codes and/or authorities having jurisdiction, unless otherwise specified in this Agreement.
- 9.18 The Subcontractor shall cooperate with the Contractor and other subcontractors whose work might interfere with the Subcontractor's Work, and shall participate in the preparation of coordinated drawings as required by the Contract Documents or Contractor, and the Subcontractor shall specifically note and advise the Contractor of any such interference. The Subcontractor shall be required if requested by the Contractor to attend coordination meetings until such time as the coordination process is complete. If the Subcontractor fails to perform such coordination, the Work will be removed and reinstalled at no additional expense to the Contractor or Owner.



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- 9.19 The Subcontractor warrants to the Owner, the Architect and the Contractor that all materials and equipment furnished shall be new unless otherwise specified, and that all Work under this Subcontract shall be of good quality, free from faults and defects, and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. The warranty provided herein shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.
- 9.20 The Subcontractor, and any of its sub-subcontractors or agents, will be responsible for a walk through of the Project before the expiration of the warranty to correct and repair any items determined to be covered under the warranty provided herein. All costs for this walk through and any repairs required will be paid for by the Subcontractor. Failure to perform its required walk through inspection will not relieve the Subcontractor of its responsibility to correct defective items after the expiration of the warranty.
- 9.21 Unless otherwise noted in the Contract Documents, the warranty start date shall commence for the work and materials supplied under this subcontract on the same commencement date as the Contractor's warranty start date for the entire Project. The Subcontractor warrants its Work against all deficiencies and defects in materials and/or workmanship as called for in this Subcontract. The Subcontractor agrees to satisfy such warranty obligations which appear within the warranty period established in this Subcontract without cost to the Owner or the Contractor. Unless otherwise specified in this Subcontract or in the Contract Documents, the Subcontractor shall warrant its work against all deficiencies in materials and/or workmanship for a period of one year.
- 9.22 The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time, and damages for delays or other causes in accordance with the Contract Documents. Any such claim which will affect or become part of a claim which the Contractor is required to make under the Contract Documents within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Contract Documents. Such claims shall be received by the Contractor not less than two (2) working days preceding the time by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.
- 9.23 In the event the Subcontractor's Work or performance of this Subcontract is delayed or interfered with by acts of the Owner or Contractor, the Subcontractor may request an extension of the time of performance of the Work, but the Subcontractor shall not be entitled to an extension of time or to any increase in the Subcontract Sum or to damages or additional compensation as a consequence of such delays or interference, except to the extent that the Owner Contract entitles the Contractor to an extension of time or to compensation for such delays, and then only to the extent of time or any amounts that the Contractor may recover from the Owner.



- 9.24 Subcontractor shall provide all cutting and patching related to its scope of Work. Patching will be of adequate quality to accept finishes.
- 9.25 All subcontractors will provide one (1) man every Friday for a composite clean-up crew as directed by the Contractor's Project superintendent.

#### ARTICLE 10 CONTRACTOR

- 10.1 Depending on the form of Agreement between the Owner and Contractor, the term "Contractor" may also be interchanged with "Construction Manager" or "General Contractor."
- 10.2 The Contractor shall be bound to the Subcontractor by the terms of this Agreement, and to the extent that provisions of the Owner Contract apply to the Work of the Subcontractor as defined in this Agreement, the Contractor shall assume toward the Subcontractor all the obligations and responsibilities that the Owner, by those Documents, assumes toward the Contractor, and shall have the benefit of all rights, remedies and redress against the Subcontractor which the Owner, by the Owner Contract, has against the Contractor. Where any provision of the Owner Contract is inconsistent with any provisions of this Agreement, the provision granting the Contractor the greater rights or setting forth the more stringent requirement as applied to Subcontractor shall govern.
- 10.3 The Contractor shall cooperate with the Subcontractor in scheduling and performing its Work to avoid conflicts or interference in the Subcontractor's Work, and shall expedite written responses to submittals made by the Subcontractor in accordance with this Agreement. As soon as practicable after execution of this Agreement, the Contractor shall provide the Subcontractor a copy of the estimated progress schedule of the Contractor's entire work which the Contractor has prepared and submitted for the Owner's and the Architect's information, together with such additional scheduling details as will enable the Subcontractor to plan and perform its Work properly. The Subcontractor shall be notified promptly of any subsequent changes in the progress schedule and the additional scheduling details. The Subcontractor has five (5) working days to notify the Contractor of any exceptions to the updated schedule provided. If no exceptions are provided, it will be understood that the Subcontractor has accepted the revised schedule.
- 10.4 When possible, the Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work. It is the Subcontractor's responsibility to review all site plans and any logistics plans created by the Contractor. Any additional costs to the Subcontractor resulting from the relocation of such facilities at the direction of the Contractor not previously discussed and incorporated into this Agreement shall be reimbursed by the Contractor.
- 10.5 The Contractor shall promptly notify the Subcontractor of all modifications to the Owner Contract which affect this Subcontract and which were issued or entered into subsequent to the execution of this Subcontract.



- 10.6 The Contractor shall not give instructions or orders directly to employees or workmen of the Subcontractor except to persons designated as authorized representatives of the Subcontractor or unless an imminent safety concern is determined and needs immediate correction.
- 10.7 Except as may be indicated in this Agreement, the Contractor agrees that no claim for payment for services rendered or materials and equipment furnished by the Contractor to the Subcontractor shall be valid without prior notice to the Subcontractor and unless written notice thereof is given by the Contractor to the Subcontractor not later than the tenth day of the calendar month following that in which the claim originated.
- 10.8 If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within forty-eight (48) hours after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, and without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payments then or thereafter due the Subcontractor including, at the Contractor's discretion, a fifteen percent (15%) supervision and overhead allowance; provided, however, that if such action is based upon faulty workmanship or materials and equipment, the Architect shall first have determined that the workmanship or materials and equipment are not in accordance with the Contract Documents.

#### ARTICLE 11 CHANGES IN THE WORK

- 11.1 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, the Subcontract Sum and the Contract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of any claim for adjustment to the Subcontract Sum and Contract Time for such revised Work in a manner consistent with the Contract Documents. If the Contractor or Subcontractor are unable to agree as to an adjustment in the Subcontract Sum and/or the contract time, and upon written demand from the Contractor, the Subcontractor shall proceed to complete the change or revised Work and the parties shall determine any change in Subcontract Sum and/or contract time through article 14 as provided herein. The Subcontractor shall promptly proceed with the performance of the Work as changed subject to all other provisions of this Agreement.
- 11.2 The Contractor's personnel shall have the authority to direct changes in the Work within the general scope of this Subcontract on a Time and Material basis. The Subcontractor will then be responsible to submit daily documentation describing the hours worked with approved labor rates for the Subcontractor's personnel, excluding Subcontractor's office staff, project management staff, superintendents, foreman, or other personnel not directly performing the Work, and any materials and equipment used in the performance of the directed Work, for the Contractor's designated personnel to sign and acknowledge. Failure to submit daily documentation shall mean that the Subcontractor shall waive its claim for additional compensation for a directed



change. Furthermore, any Time and Material documentation signed by the Contractor's personnel which is later to be determined to be part of the Work included in this Agreement shall not be to the basis for extra compensation, regardless of whether the Contractor's personnel signed said documentation.

- 11.3 If the Contract Documents do not identify an allowable change order mark-up rate for additional work, the Subcontractor shall be limited to a 10% overhead and profit mark-up. Unless specifically noted in this Agreement, the Subcontractor's compensation for office staff, project management staff, superintendents, foreman, or other personnel not physically and/or directly performing the Work, are included in the allowable overhead and profit mark-up.
- 11.4 The only person(s) authorized to issue a change order shall be the Contractor's President, Vice President of Operations, Director of Field Operations, Project Manager, Project Engineer, and/or Superintendent.
- 11.5 Subcontractor shall not be entitled to extra compensation for changes of any kind unless a change order has been issued by the Contractor. If extra or additional work was performed without a written change order or written directive, the Subcontractor shall be deemed to have waived any claim to extra compensation.
- 11.6 The Contractor's personnel shall have the authority to order minor changes in the Work which do not involve adjustments in the Contract time or consideration and which are not inconsistent with the intent of the Contract Documents.

## ARTICLE 12 INDEMNIFICATION

- 12.1 To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless the Owner, Contractor, Architect, any other parties required by the Owner Contract, and consultants, agents and employees of any of them (individually or collectively, "Indemnatee") from and against all claims, damages, liabilities, losses and expenses, including but not limited to attorneys' fees, arising out of or in any way connected with the performance or lack of performance of the Work under this Agreement and any change orders or additions to the Work, provided that any such claim, damage, liability, loss or expense is attributable to bodily injury, sickness, disease or death, or physical injury to tangible property including loss of use of that property, or loss of use of tangible property that is not physically injured, and caused in whole or in part by any actual or alleged:
- Act or omission of the Subcontractor, or anyone directly or indirectly retained or engaged by it, or anyone for whose acts Subcontractor may be liable; or
  - Violation of any statutory duty, regulation, ordinance, rule or obligation by an Indemnatee provided that the violation arises out of or is in any way connected with the Subcontractor's performance or lack of performance of the Work under the agreement.



The Subcontractor's obligations under this Article shall apply regardless of whether or not any such claim, damage, liability, loss or expense is or may be attributable to the fault or negligence of the Contractor.

In the event that an Indemnitee is determined to be partially responsible for a claim, as determined by a verdict or judgment, then, in addition to the foregoing, Subcontractor's obligation to indemnify the Indemnitee for any amount, payment, judgment, settlement, mediation or arbitration award shall extend only to the percentage of negligence of the Subcontractor and anyone directly or indirectly engaged or retained by it and anyone else for whose acts the Subcontractor is liable. The indemnity obligation under this Article shall not be construed to negate, abridge or reduce any other right or obligation of indemnity that would otherwise exist as to any person or entity described in this Article.

- 12.2 In any and all claims against an Indemnitee by any employee of the Subcontractor or anyone directly or indirectly retained or engaged by it or anyone for whose acts it may be liable, the indemnification obligation under this Article shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.
- 12.3 The indemnification obligation under this Article shall not be limited in any way by the amount or type of insurance required to be provided to or for the benefit of an Indemnitee as described in this Agreement.
- 12.4 The obligations of the Subcontractor under Section 12.1 shall not extend to the liability of the Architect, his agents or employees arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, his agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

#### ARTICLE 13 ASSIGNMENT

- 13.1 The Subcontractor shall not assign this Subcontract without the written consent of the Contractor, nor subcontract the whole of this Subcontract without the written consent of the Contractor, nor further subcontract portions of this Subcontract without written notification to the Contractor when such notification is requested by the Contractor. The Subcontractor shall not assign any amounts due or to become due under this Subcontract without written notice to the Contractor. Any attempt of assignment without Contractor's written consent shall be void and of no effect.

#### ARTICLE 14 DISPUTE RESOLUTION AND ARBITRATION

- 14.1 The Contractor and Subcontractor agree that – in the Contractor's sole discretion – any claims, disputes and other matters in question arising out of, or relating to, this Agreement, or the breach thereof, shall be decided in the same manner as described in





the Owner Contract. Should the Contractor elect not to resolve a claim, dispute or other matter in question arising out of, or relating to, this Agreement, or the breach thereof, in the same manner as described in the Owner Contract, then the Contractor and Subcontractor agree to decide such claim, dispute, or other matter as described in sections 14.2-14.4 of this Agreement.

- 14.2 All claims, disputes and other matters in question arising out of, or relating to, this Agreement, or the breach thereof – not resolved by section 14.1 – shall be decided by arbitration, which shall be conducted in Syracuse, New York. Arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then existing unless the parties mutually agree otherwise.
- 14.3 The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.
- 14.4 This Article shall not be deemed a limitation of any rights or remedies which the Subcontractor may have under any Federal or State mechanics' lien laws or under any applicable labor and material payment bonds unless such rights or remedies are expressly waived by him in accordance with applicable law.

#### ARTICLE 15 TERMINATION

- 15.1 If the Work is stopped for a period of thirty days through no fault of the Subcontractor because the Contractor has not made payments thereon as provided in this Agreement, then the Subcontractor may without prejudice to any other remedy it may have, upon seven (7) additional days written notice to the Contractor, terminate this Subcontract and recover from the Contractor payment for all Work executed to date of termination including materials delivered to the Project site but not incorporated into the Project, plus reasonable overhead and profit.
- 15.2 The Contractor, upon 48 hours written notice to the Subcontractor and without prejudice to any other rights or remedies it may have, may terminate Subcontractor's right to proceed with the Work in the event of any of the following:
1. If the Subcontractor shall refuse or fail to supply sufficient numbers of properly skilled workmen or materials of the proper quality or to perform any of its obligations hereunder with sufficient diligence to ensure completion of the Work within the time specified;
  2. If the Subcontractor be adjudicated bankrupt or shall file a petition for voluntary bankruptcy, reorganization or other relief pursuant to Federal Bankruptcy laws or make an assignment for the benefit of creditors;
  3. If a receiver or liquidator shall be appointed for the Subcontractor or any of his property and shall not be dismissed within twenty days after such appointment, or the proceedings in connection therewith shall not be stayed upon appeal within the said twenty days;



4. If the Contractor becomes dissatisfied for just cause with the manner in which the Subcontractor is doing the Work, or should the Subcontractor fail to remove and discharge any lien filed against the Project in accordance with this Subcontract; or
  5. Inharmonious activity by the Subcontractor's personnel.
- 15.3 Upon termination of the Subcontractor's right to proceed with the Work, the Contractor shall be entitled to take possession of all materials and equipment of the Subcontractor and to complete the Work in such a manner as the Contractor, in his sole discretion may determine. The Subcontractor shall not be entitled to receive any further payment except as provided herein.
- 15.4 If the unpaid balance of monies otherwise due to the Subcontractor under this Agreement shall exceed the cost of completing the Work, including the cost of additional services, attorney's fees and costs, and/or any damage for delays, plus an allowance of fifteen percent (15%) for Contractor's supervision and overhead, such excess shall be paid to the Subcontractor. If such costs, including an allowance of fifteen percent (15%) for the Contractor's supervision and overhead, exceed the unpaid balance, the Subcontractor and his surety shall be liable to the Contractor for the excess amount.

#### ARTICLE 16 MISCELLANEOUS PROVISIONS

- 16.1 This Subcontract shall not become effective until the following conditions precedent, if applicable, are fully satisfied:
1. Execution of an agreement by the Contractor with the Owner if such agreement has not been executed prior to the execution of this Subcontract.
  2. Approval of Subcontractor by Architect or Owner.
  3. Receipt from Subcontractor and approval of all insurance certificates, surety bonds or other like documents required of the Subcontractor.
  4. Receipt from Subcontractor of any and all necessary permits, licenses or other like things required to be obtained by the Subcontractor.
- 16.2 Subcontractor shall, before proceeding with its Work, check and verify all dimensions and quantities and check all installations and work performed by others to determine their accuracy and prevailing field conditions. Failure to detect and promptly report deficiencies, inaccuracies, materially changed conditions or unforeseen and unusual circumstances shall be a waiver of and acceptance of such conditions. No increased costs, expenses or damages incurred shall be allowed or paid unless such has been reported promptly upon discovery and Contractor has given written approval of such increased costs, expenses or damages prior to any further work by Subcontractor.



- 16.3 The Subcontractor shall protect his Work until final completion and acceptance and shall make good or replace at no expense to the Contractor any damage to the Work which may occur prior to final acceptance.
- 16.4 The Subcontractor agrees to employ personnel on the Project who will at all times work in harmony with the personnel employed by the Contractor and others on the Project. Should the Work for any reason be stopped or materially delayed in the judgment of the Contractor due to the Subcontractor not having proper or adequate personnel to do the Work, then Contractor shall have the right, after forty-eight (48) hours written notice to the Subcontractor, to employ such personnel. The cost of completing the unfinished part of the Subcontractor's Work shall be charged to the Subcontractor pursuant to the termination provisions of this Agreement.
- 16.5 It is further understood that contracts will be awarded and labor employed upon the Project without discrimination as to whether the employees of the subcontractors are members or are not members of any labor organization. The Subcontractor agrees that, in the event of a work stoppage resulting from a labor dispute directed at the Subcontractor, the Contractor shall have the right to proceed as set forth in the preceding paragraph.
- 16.6 Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.
- 16.7 The Contract Documents, which include, but are not limited to, the entire Owner Contract, are listed in Article 1, and as set forth in Article 1, also include the following documents:
1. General Conditions;
  2. Schedule 1 - Insurance Requirements, attached;
  3. The Hayner Hoyt Corporation Subcontractor Payment Application form
  4. Tax Status – Tax Exempt
- 16.8 Drawing and Specifications

Dwg./Spec. No.	Description	Revision Date

*Reference  
Scope ATTACHED*



Contractor  
Accounting  
Purposes Only:

Job Number: 215232  
Cost Code:  
Special Payment Terms: N



## ARTICLE 17 WAIVER AND RELEASE OF LIEN

- 17.1 If any person or entity files or maintains any form of lien or claim against the Project, or the Project site, in connection with the Subcontractor's Work or in connection with the Work or materials of Subcontractor's sub-subcontractors or suppliers, the Subcontractor shall, at Subcontractor's sole cost and expense, promptly remove or discharge the same within three (3) days after notice from the Contractor. Upon failure of Subcontractor to provide satisfactory evidence of said removal or discharge within said time frame, the Contractor shall have the right to remove or discharge the same by bonding, deposit, payment or otherwise, in its sole discretion, for the account of the Subcontractor. The amount of any costs and expenses incurred by Contractor, including, but not limited to attorneys' fees, shall be deducted from any amounts then or thereafter owing to Subcontractor; or if Subcontractor has been fully paid, the Subcontractor shall pay to the Contractor the amount of said costs and expenses within ten (10) days after demand therefore. Subcontractor does hereby indemnify and save harmless Contractor and Owner, or either, from all claims, demands, causes of action or suits, (including, but not limited to reasonable attorneys' fees incurred by Contractor and/or Owner in connection therewith), of whatever nature arising out of the services, labor, equipment and materials furnished by Subcontractor, or its sub-subcontractors or suppliers, under this Agreement, and for costs and charges arising out of, or in connection with, any act or representation of Subcontractor, its agents or employees. Subcontractor hereby grants to Contractor the authority, at Contractor's sole discretion, to issue payments for any amounts due Subcontractor jointly payable to Subcontractor and materialmen and/or sub-subcontractors for any obligations of Subcontractor to the same unpaid on the Project. In the event such joint payments become necessary, Contractor may deduct from amounts due Subcontractor, its reasonable costs for processing each such joint payment. Contractor may, as a condition precedent to any payment hereunder, require Subcontractor to submit complete Waivers or Releases of any kind and of all claims of any person, firm or corporation.

## ARTICLE 18 SEVERABILITY

- 18.1 In the event that any provision or any part of this Agreement shall be finally determined to be superseded, invalid, illegal or otherwise unenforceable pursuant to applicable law, such determination shall not impair or otherwise affect the validity, legality or enforceability of the remaining provisions of this Agreement.

## ARTICLE 19 ENTIRE AGREEMENT

- 19.1 This Agreement constitutes the entire agreement between the parties. No oral representations or other agreements have been made by the Contractor except as stated in this Agreement. This Agreement may not be changed in any way except as provided herein, and no term or provision hereof may be waived by the Contractor except in writing.



Contractor                      Job Number: 215232  
Accounting                     Cost Code:  
Purposes Only:                Special Payment Terms: N

## ARTICLE 20 GOVERNING LAW

20.1 This Agreement shall be governed by, and construed under, the laws of the State of New York.

## ARTICLE 21 COUNTERPARTS

21.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

The Contractor:

The Hayner Hoyt Corporation

(Signature)

Robert Mastro - Project Manager

(Printed Name and Title)

(Date)

ATTEST

The Subcontractor:

OFF DUTY OFFICERS, INC.

(Signature)

MARC ESPINOSA

(Printed Name and Title)

(Date)

ATTEST



Contractor  
Accounting  
Purposes Only:

Job Number: 215232  
Cost Code:  
Special Payment Terms: N

## SCHEDULE 1

## INSURANCE REQUIREMENTS (Rev. 6/13)

The insurance requirements shall be as set forth below. Subcontractor shall file with Contractor certificates on a form acceptable to the Contractor evidencing the required insurance and before commencing work.

Subcontractor shall at its expense, purchase and maintain in effect until acceptance of the entire project by the General Contractor insurance coverage with insurance companies satisfactory to the Contractor. Subcontractors insurance carriers shall be A (minus) rated or better by AM Best.

Insurance Requirements - The Subcontractor shall maintain the following minimum coverages.

1. Commercial General Liability (CGL) with limits of insurance not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate.

The CGL general aggregate coverage limit, shall apply separately to each project.

In addition,

- a. CGL coverage shall be written on ISO Occurrence form CGOO 01 (10/01) or a substitute form providing equivalent coverage and shall cover liability arising from premise and operations, independent contractors, products-completed operations and personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- b. The Hayner Hoyt Corporation, Owner, Architect, any other parties required by the Contractor's Agreement with the Owner, and consultants, agents and employees of any of them shall be included as additional insured on a Primary and non-contributory basis on the CGL, using ISO Additional Insured Endorsement CG 20 10 (11/85) (on going and product completed operations) or both CG 20 10 (10/01) (on going operations) and CG 20 37 (10101) (product completed operations) or an equivalent coverage to the additional insured. This insurance for the additional insured shall be as broad as the coverage provided for the named insured Subcontractor. It shall apply as primary insurance on a non-contributing basis before any other insurance or self-insurance, including any deductible, maintained by or provided to, the additional insured. **There shall be no exclusions to Contractual Liability for Employee Injuries (i.e. Labor Law Exclusions).**
- c. There shall be no endorsement of modification of the Subcontractors CGL policy arising from pollution, explosion, collapse, underground property damage of work performed by subcontractors.
- d. Subcontractor shall waive all rights of subrogation against The Hayner Hoyt Corporation, Owner and Architect and their agents, officers, directors and



employees for recovery of damages to the extent these damages are covered by commercial general liability policy (CGL).

- e. The Subcontractor's General Liability policy shall include coverage for the Subcontractor and any of the additional insureds for any operations performed on residential projects including multi-family housing, residential apartments and assisted living facilities.
- f. Subcontractor shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain completed operations coverage for itself and each additional insured for at least 2 years after completion of the Work.

2. Automobile Liability

- a. Business auto liability with limits not less than \$1,000,000 each accident.
- b. Business auto coverage must include coverage for the liability arising out of the use of all owned, leased, hired, and non-owned automobiles.
- c. Coverage shall name The Hayner Hoyt Corporation, Owner, Architect, any other parties required by the Contractor's Agreement with the Owner, and consultants, agents and employees of any of them shall be included as additional insured on a Primary and noncontributory basis

3. Commercial Umbrella/Excess

- a. Umbrella/excess liability limits of not less than \$5,000,000.
- b. Umbrella coverage must follow form the CGL and include The Hayner Hoyt Corporation, Owner, Architect, any other parties required by the Contractor's Agreement with the Owner, and consultants, agents and employees of any of them shall be included as additional insured on a Primary and noncontributory basis.

4. Workers Compensation and Employers Liability

- a. Statutory Employers Liability insurance limits
- b. Where applicable, the Maritime Coverage Endorsement shall be attached to the policy.
- c. Where applicable, the Longshore and Harborworkers Compensation Act endorsement shall be attached to the policy.
- d. Workers Compensation coverage will be written to include all employees, including all executive officers.

☐ If box is checked, the following additional insurances are required:

5. Pollution Liability Policy



Contractor  
Accounting  
Purposes Only: Job Number:215232  
Cost Code:  
Special Payment Terms: N

- a. If Subcontractor and/or its subcontractors or suppliers perform remediation of hazardous material or if their operations create an exposure to hazardous material as those terms are defined in federal, state, or local law, Subcontractor and its subcontractors and suppliers must obtain a "Contractors Pollution Liability Policy" with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for Bodily Injury, Personal Injury, and Property Damage, naming The Hayner Hoyt Corporation, Owner, Architect, any other parties required by the Contractor's Agreement with the Owner, and consultants, agents and employees of any of them additionally insured on a Primary and noncontributory basis.
- b. If subcontractor or its subcontractors or suppliers haul hazardous material (including, without limitation, waste), they must carry Auto Liability Insurance with a \$1,000,000 combined single limit of Bodily Injury and Property Damage applicable to all hazardous waste hauling vehicles and include MCS 90 and a Pollution Liability coverage endorsement.

Attached to each certificate of insurance shall be a copy of the additional insured endorsement that is part of the subcontractor's commercial general liability (CGL) policy.

Certificates of insurance and the insurance policies required shall contain a provision that coverages afforded under the policies will not be cancelled, changed or allowed to expire until at least 30 days prior written notice has been given to The Hayner Hoyt Corporation. In the event that Subcontractor fails to obtain or maintain any required insurance, The Hayner Hoyt Corporation may purchase such insurance and back charge the expenses thereof to the Subcontract amount, or may terminate the contract.



Contractor  
Accounting  
Purposes Only:

Job Number:215232  
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Special Payment Terms: N